

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LLOYD D. GEORGE UNITED STATES COURTHOUSE
333 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NV 89101

DEBRA K. KEMPI
CLERK OF COURT

TELEPHONE (702) 464-5456

October 14, 2021

Mary B. O'Riley
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Re: O'Riley, *et al.*, v. Walmart Stores, Inc., *et al.*, Case No.: 3:11-CV-00232-LRH-WGC

Dear Ms. O'Riley and Mr. Chambers and Counsel,

I have been contacted by Judge Larry R. Hicks, who presided over the above-mentioned case in 2011 and 2012. The federal claims in this case were dismissed by Judge Hicks and the state claims were dismissed without prejudice.

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Judge Hicks informed me that he recently learned that while he presided over the case he had a conflict of interest because he owned stock in Wal-Mart Stores, Inc. His ownership of stock neither affected nor impacted his decision in this case. However, his stock ownership would have required recusal under the Code of Conduct for United States Judges. Thus, Judge Hicks directed that I notify the parties of the conflict.

Advisory Opinion 71, from the Judicial Conference Codes of Conduct Committee, provides the following guidance for addressing disqualification that is not discovered until after a judge has participated in a case:

[A] judge should disclose to the parties the facts bearing on disqualification as soon as those facts are learned, even though that may occur after entry of the decision. The parties may then determine what relief they may seek and a court (without the disqualified judge) will decide the legal consequence, if any, arising from the participation of the disqualified judge in the entered decision.

Although Advisory Opinion 71 contemplated disqualification after a Court of Appeals oral argument, the Committee explained that “[s]imilar considerations would apply when a judgment was entered in a district court by a judge and it is later learned that the judge was disqualified.”

Based on Advisory Opinion 71, you are invited to respond to Judge Hicks’ disclosure of a conflict in this case. Should you wish to respond, please submit your response directly to me, not to Judge Hicks, by November 12, 2021. Any response will be considered by another judge of this court without Judge Hicks’ participation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Debra K. Kempi". The signature is fluid and cursive, with the first name "Debra" being more prominent.

DEBRA K. KEMPI
Clerk of Court